

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT JAMES TIERNEY

Claim No. CU -0799

Decision No. CU -3344

Under the International Claims Settlement  
Act of 1949, as amended

Appeal and objections from a Proposed Decision entered on December 3, 1968. No oral hearing requested. Hearing on the record held on March 14, 1969.

FINAL DECISION

By Proposed Decision dated December 3, 1968 the Commission certified a loss to this claimant in the total amount of \$9,718.42 plus interest. Of this amount, \$9,278.92 represented the value of 200 shares of stock in Cia. Azucarera Vertientes-Camaguey de Cuba, which claimant had owned on August 6, 1960 when the enterprise was nationalized and when the value per share of stock was \$46.3946. The remaining \$439.50 represented the consideration paid by claimant for an additional 200 shares of Vertientes stock purchased by claimant on March 19, 1963. The certification of loss as to this portion of the claim was limited to the amount of the consideration paid by claimant for the stock, under Section 507(b) of Title V of the International Claims Settlement Act of 1949, as amended, which reads as follows:

The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

Claimant filed objections to the portion of the Proposed Decision limiting the certification of loss as to his later-acquired shares to \$439.50. He argues that the difference between this amount and \$9,278.92, the value of the shares at the time of nationalization

of the corporation, should not accrue to the benefit of the Cuban Government, and that Section 507(b) of the Act should be applied only to stock purchases made after October 19, 1965, the date of enactment of Title V. He suggests further that the difference be divided equally between himself and the person from whom he purchased the 200 shares on March 19, 1963.

*The Act makes no provision for the certification of loss to any person for the difference between the value of the stock on August 6, 1960 and any lesser amount paid for stock assigned thereafter. The Commission must administer the statute as enacted, and is without authority to certify losses for which no provision is made in the Act, or to exceed limitations imposed by the Act. The Commission consistently has held that where a claimant purchased stock subsequent to the date of nationalization of the issuing corporation, Section 507(b) of the Act precludes the granting of a certification of loss in an amount greater than the consideration paid for the stock. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)*

Accordingly, the Proposed Decision of December 3, 1968 is hereby affirmed and entered as the Final Decision of the Commission on this claim.

Dated at Washington, D. C.,  
and entered as the Final  
Decision of the Commission

**MAR 26 1969**

*Leonard v. B. Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
Sidney Freidberg, Commissioner

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

ROBERT JAMES TIERNEY

Claim No. CU -0799

Decision No. CU 3344

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

Claimant, ROBERT JAMES TIERNEY, who owned a stock interest in the Cia. Azucarera Vertientes-Camaguey de Cuba, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Ruth Anna Haskew (Claim No. CU-0849 which we incorporate herein by reference), we held that the properties owned by the Company were nationalized or otherwise taken by the Government of Cuba on August 6, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per share of \$46.3946.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Haskew decision; that he was an American national at the requisite times; that he has been the owner of 200 shares of stock in the Cia. Azucarera Vertientes-Camaguey de Cuba since prior to August 6, 1960; and that he suffered a loss in the amount of \$9,278.92 within the meaning of Title V of the Act.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

Section 507 of the Act provides, as to assignment of claims, that

(b) The amount determined to be due on any claim of an assignee who acquires the same by purchase shall not exceed (or, in the case of any such acquisition subsequent to the date of the determination, shall not be deemed to have exceeded) the amount of the actual consideration paid by such assignee, or in case of successive assignments of a claim by any assignee.

On the basis of evidence of record, the Commission finds that claimant also acquired 200 shares of Vertientes by purchase on March 19, 1963 for a consideration of \$439.50.

Under the provisions of Section 504(a) of the Act, a claimant is required to establish that the claim for any loss has been continuously owned by a national or nationals of the United States from the date of loss to the date of filing with the Commission. The loss occurred on August 6, 1960. In similar cases claimants have been unable to obtain information or evidence to establish the nationality of the owner of the securities on the date of loss, and to establish continuous United States ownership of the securities until the date on which claimant acquired them.

Evidence of record before the Commission discloses that securities of the type subject of this claim were almost entirely owned and traded by persons or firms having addresses in the United States. The Commission has considered whether an inference may be justified that the claimed securities were continuously owned by a national or nationals of the United States from the date of loss to the date on which purchased by the claimant, and, in the absence of evidence to the contrary, has concluded that the securities were continuously so owned. (See Claim of the Executors of the Estate of Julius S. Wikler, Deceased, Claim No. CU-2571.)

The Commission finds that claimant, upon his purchase of the last 200 shares, succeeded to the loss sustained by the assignor of the claimed securities, and concludes that he succeeded to and suffered a loss in the total amount of \$439.50 (the price he paid) as a result of the nationalization of the Company on August 6, 1960.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, FCSC Claim No. CU-0644.)

The Commission concludes, however, that the amount of loss sustained by claimant herein shall be increased by interest thereon at the rate of 6% per annum from the dates below, on which claimant acquired this claim, to the date on which provisions are made for the settlement thereof:

| <u>From</u>    | <u>On</u>     |
|----------------|---------------|
| August 6, 1960 | \$9,278.92    |
| March 19, 1963 | <u>439.50</u> |
|                | \$9,718.42    |

CERTIFICATION OF LOSS

The Commission certifies that ROBERT JAMES TIERNEY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Nine Thousand Seven Hundred Eighteen Dollars and Forty-two Cents (\$9,718.42) with interest at 6% per annum from the aforesaid dates to the date of settlement.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

DEC 3 1968

*Leonard v B Sutton*  
Leonard v. B. Sutton, Chairman

*Theodore Jaffe*  
Theodore Jaffe, Commissioner

*Sidney Freidberg*  
Sidney Freidberg, Commissioner

CU-0799

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)